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1 A. I recall a visit where we took documents, we
 2 took our case file to them, and I think they copied
 3 them at their offices. It's just too voluminous for us
 4 to do and mail, and I don't remember if it was Speer or
 5 Canales. I don't recall, but I don't even remember
 6 which lawyer it was, but I remember going to Texarkana
 7 with our case file and having copies made. So I don't
 8 know. I don't know if there was a mailing of documents
 9 or not.

10 Q. And again, if you don't know, that's fine.

11 I'm just trying to be clear on it.

12 A. Well, I want to remember.

13 Q. Regardless of how you handled discovery in
 14 Canales' case, I want to focus in on Speer.

15 A. Yes, sir.

16 Q. Would there have been an initial discovery
 17 response by your office?

18 A. Well, to the best of my knowledge, but as I
 19 recall there's -- I believe we used what's called an
 20 omnibus order for discovery, and that's about the open
 21 file policy, and Mr. Mullin can address that better
 22 than I can. Sometimes I'm there when discovery is
 23 made, sometimes I'm not; but I do recall bringing our
 24 case law to some lawyers in Texarkana. That's the best
 25 I can remember.

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1 Q. Now, Mr. Whited in connection with the
 2 Canales/Speer case, who was he and why was he
 3 important?

4 A. Larry Whited was a Texas Mafia member, and I
 5 don't recall his rank or his function in the gang, but
 6 he had knowledge about the Dickerson killing. I don't
 7 remember. I can't remember how important he was, but I
 8 do remember he didn't testify for us.

9 Q. And that was my next question. Do you recall
 10 why Mr. Whited didn't testify at trial?

11 A. No, I don't, I sure don't.

12 Q. I'm going to hand you Deposition Exhibit
 13 Number 11 and ask if you can identify that document.

14 A. Yes, sir.

15 Q. And what is that?

16 A. This is a letter from me to Sergeant Burson,
 17 who is the gang intelligence officer at the Wynne Unit,
 18 dated March 13th of 2000. There is my letter to
 19 Sergeant Burson referring to Bruce Innes's letter to me
 20 about Canales' threat against Larry Whited, who was
 21 called Bam. That's his gang name -- I mean, Iron. I
 22 think he was called Bam also.

23 And I'm telling Sergeant Burson once again if
 24 he gets letters back and forth that doesn't mean he's
 25 still trying to be in the gang.

1 Q. I'm going to hand you what I'm going to mark
 2 as Deposition Exhibit No. 12, and does that appear to
 3 be a letter from Mr. Innes dated March 6th, 2000, which
 4 caused you to generate Deposition Exhibit Number 11?

5 A. This looks like he's wanting me to write
 6 Sergeant Burson to talk about why he's getting mail to
 7 and from the gang.

8 Q. And that the mail that he's receiving from
 9 the gang is preventing him from going further in his
 10 deconfirmation process?

11 A. On the face of it, it sounds like they're
 12 doubting their sincerity because he's getting mail back
 13 and forth, so he's asking me to write Sergeant Burson
 14 about the situation.

15 Q. I'm going to hand you what's been marked as
 16 Deposition Exhibit No. 13 and ask if you can identify
 17 that document.

18 A. This is another letter from Innes to me, June
 19 4, 2000.

20 A. Okay.

21 Q. And that letter refers to an issue involving
 22 a person nicknamed Iron?

23 A. Yeah, which would be Larry Whited, yes, sir.

24 Q. And he indicates that -- Mr. Innes indicates
 25 that he had written you concerning that issue and never

1 heard back from you?

2 A. Right. He's insinuating that I ignored his
 3 letter, and actually he says, "If you could take the
 4 time to come across the street and come see me, you
 5 know, we could talk," which that was his version of the
 6 facts. There's reasons I can't go see him all the
 7 time, of course, and he didn't understand that; but,
 8 yeah, he's talking about some updates on gang business,
 9 some of the leadership and he's talking about, he says
 10 he wrote Canales about the issue of taking Iron out,
 11 which would be Larry Whited, and sent it to you to mail
 12 out; and I don't recall ever mailing a letter from
 13 Bruce Innes to Canales. I'm emphatic about never doing
 14 that. I don't recall that at all.

15 Q. And he's also expressing concern in
 16 Deposition Exhibit No. 15 that perhaps Canales and the
 17 others may know that he has a defense -- I'm sorry, a
 18 prosecution witness?

19 A. Who? Bruce Innes?

20 Q. Yes.

21 A. That Canales might know he is one?

22 Q. Yes, because the witness list had been
 23 released.

24 A. I guess you're talking about in the Speer
 25 case.

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1 Q. Either, either Canales or I suppose it would
 2 have been Canales.

3 A. We haven't had Canales yet. Can you show me
 4 where the witness list part is?

5 Q. You can read these better than I can.

6 A. It must have stuck in your brain somewhere.

7 I don't see it in that letter. "I'd like to ask if
 8 there is any witness list or evidence been made
 9 available," so he's asking if there's a witness list.

10 Q. And whether that's been disclosed to
 11 Mr. Canales?

12 A. Yeah. He's asking me if it's been done,
 13 which I don't know if it has by that time or not;
 14 perhaps.

15 Q. Who was Lonnie Eason, and what was his
 16 connection to this prosecution?

17 A. He, I don't recall if he was a confirmed gang
 18 member or not, but he did have -- he was a potential
 19 witness for us. He had information about the killing
 20 that we thought was important, and I can't recall what
 21 it was at this time, but I know he later turned on us
 22 and turned against us and he didn't help us. That's
 23 why his name sticks out, and I've had a lot of
 24 correspondence with him.

25 Q. I'm going to hand you what's been marked as

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1 important to us. Then I'm just telling him where I've
 2 been and why I haven't written back to him in a long
 3 time.

4 Q. Now, you indicated that Larry had his own
 5 problems?

6 A. Yes, sir.

7 Q. Do you recall what that was about?

8 A. No. I know that he was getting threats. I
 9 know he has physical problems, I think his liver or
 10 something like that. I don't recall, but I know he has
 11 physical problems, and there were some family problems
 12 that I don't recall. He was a miserable man. I don't
 13 remember everything about it.

14 Q. I'm going to hand you what I've marked as
 15 Deposition Exhibit No. 15 and ask if you can identify
 16 that document.

17 A. It looks like a letter purporting to be from
 18 Lonnie Eason to me about Bruce Innes.

19 Q. And I'll give you a little time to refer to
 20 that, but would it be fair to say that the gist of that
 21 letter is Mr. Eason telling you that Mr. Innes is not
 22 being true to his word in really seeking
 23 deconfirmation?

24 A. Yeah. Now, this is July the 9th, 2000, and
 25 Eason is trying to warn or inform us that Innes is

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1 Deposition Exhibit 14 and ask if you can identify that.

2 A. Yes, sir. This looks like it's in response

3 to that one we just talked about, about me coming
 4 across the street to see you. The Stiner information,
 5 Gaylord Stiner is some official in the Texas Mafia. I
 6 can't recall his exact rank, and he's obviously told me
 7 something in his letter about Stiner, and I told him I
 8 don't think there's a witness list yet, we're waiting
 9 as long as we can before we absolutely have to give it
 10 up for safety reasons. I don't apologize for that at
 11 all.

12 Q. So for safety reasons and the fact that you
 13 didn't want to plug the flow of information from other
 14 Texas members.

15 A. I would not want to stop the flow. I don't
 16 know if that's why Mark didn't give up the witness
 17 list. I'm not in charge of giving up the witness list.
 18 I'll prepare it, but I think it's good business to wait
 19 until we absolutely have to, I really do, and I'm
 20 already suspecting Lonnie Eason's motives, according to
 21 this letter to Innes. I just don't recall --

22 Q. Do you recall why you were suspecting his
 23 motives?

24 A. No, sir, I don't, and I don't even know what
 25 he knew. That's why I don't recall why he was

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1 probably not sincere in his help with us or his
 2 deconfirmation process.

3 Q. Why would -- in your opinion, why would
 4 Mr. Eason be telling you that information?

5 A. In my opinion it's because he wanted to
 6 remain with the TM if he was one of them, and he's
 7 trying to, it sounds like he's trying to make, make
 8 that known verbally where people can hear him say
 9 things that would make other inmates think that he was
 10 not a part of us; and by exposing Bruce Innes as a part
 11 of us, for lack of a better word, he's gaining the
 12 trust of other inmates is what I glean from this.

13 Q. Or that Mr. Eason is trying to up his status
 14 with your office and become, I guess, for lack of a
 15 better word the Number 1 informer.

16 A. Yeah. He wanted to, I think he wanted to
 17 manipulate us to better his situation, and I think, I
 18 think there was something about he lost his glasses, or
 19 he lost some property, and I helped him get it back, as
 20 a matter of fact. Even after he turned his back on us
 21 and we found out that he was not square with us, I
 22 continued to do what I told him I would do. I believe
 23 I wrote a parole letter for him, and I did help him get
 24 his property back because that's what I promised him,
 25 and that's what I did.

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1 Q. And when you're receiving information with
 2 regards to inmates that are working for your office,
 3 for lack of a better term, is there sometime some
 4 competition among those inmates?

5 A. It's happened, yes, sir.

6 Q. And why is that?

7 A. If they don't -- well, I can only assume, but
 8 if they don't think they're getting help fast enough or
 9 as much help as somebody else might get, they would
 10 perhaps feel like they needed to compete to get more
 11 help or help faster.

12 Q. And that's why these inmates give the
 13 information in some form is to receive some benefit?

14 A. No, sir, I totally disagree with that, I do.

15 Q. What's your opinion on that subject?

16 A. It's a heart issue to me. I've worked all or
 17 part of 156 prison murders since I've been here, and
 18 that's including the Randy Payne case where 20 inmates
 19 stomped another inmate to death. We indicted 20 prison
 20 inmates for one murder case in Polk County. The only
 21 witnesses to that case were prison inmates, no guards,
 22 no anybody, just prison inmates.

23 Using that as an example, there's no way in
 24 the world our office could have successfully prosecuted
 25 over 150 prison murders if we were known to make up

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1 stories, to manipulate inmates, to make promises we
 2 couldn't keep or to offer things that there was no way
 3 in the world that could be given to them. And me
 4 personally I can't get promoted. I can't get more
 5 money. I can't do anything by winning cases. Winning
 6 cases, it's not me; it's the prosecutors, of course, so
 7 there's no motivation for me to try to goad an inmate
 8 into helping us. If we lose a case, if a case doesn't
 9 get indicted or if we dismiss a case out-and-out, it
 10 doesn't affect my job. And for 20 years I've been
 11 here, there's no punishment to me for losing a case.
 12 We've lost cases, we really have.

13 So when I go into preparing a case for trial
 14 and I'm talking to go an inmate, potential witness, say
 15 Bruce Innes or anybody else in any number of murder
 16 cases, I'm always up front about who I am, who I work
 17 for. And one of the first words out of my mouth is I
 18 can do nothing for you, I cannot do anything for you.
 19 If I did anything else, we would never have won a case.
 20 We would never have had a witness because that word
 21 would get out very quickly.

22 So when I talk to inmates and I want you to
 23 know that if I talk to 20 inmates there might be 18 of
 24 them who will not help, absolutely refuse, and so if I
 25 was to promise, make all of these promises that I was

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1 accused of in these briefs that I read -- really,
 2 really touched me deeply. If I made the promises that
 3 I've been accused of, the two inmates who testified for
 4 us would supposedly have gotten all of these benefits
 5 and the 18 would have got nothing. Well, that's
 6 totally not true because there are inmates who don't
 7 testify for us and they're fine. And there's inmates
 8 -- and I'm glad we have them on the Eason issue --
 9 because there's inmates who turned their backs on us
 10 and totally went against our office, but I promised him
 11 a parole letter, I wrote it and I helped him get his
 12 property back, and I've had communications with him for
 13 years since then, and I've always been up and up with
 14 him.

15 So the fact that we write parole letters does
 16 not, does not make inmates testify for us. I'll write
 17 parole letters on an inmate I meet that has nothing to
 18 do with the prison crime but I think he's in dire
 19 circumstances and deserves a fair shot, I'll write that
 20 saying here's a guy and here's his situation, here's
 21 why I think you should be aware of what I'm telling you
 22 about him. And contrary to what you guys accuse me of,
 23 there's no link in the knot, and the parole board
 24 doesn't even know me. I can't even tell you who the
 25 members are. There's no link in the knot when I write

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1 a parole letter. I write a letter saying this inmate
 2 gave us important information, we think you need to
 3 know about it, if you have any questions call me. And
 4 I don't apologize for doing that. If I'm ordered by my
 5 boss to stop, I will, but I've never been. She's
 6 written parole letters also.

7 Q. The letters that you write you write on SPU
 8 stationery?

9 A. Oh, yes, sir, I sure do. I do it as a
 10 representative of our office because I'm nobody even
 11 with our office and without our office, I'm really
 12 nobody, so why would they listen to me? But I think
 13 it's important that if I tell an inmate, not if you
 14 help us I'll write a letter, but because you've helped
 15 us and cooperated I'm going to write a letter.

16 So there's no prefacing an inmate coming to
 17 testify with, hey, if you helped us I'll write you a
 18 letter. No, sir, that does not happen. It's I would
 19 rather know the guy is telling me the truth. I don't
 20 want people getting up there and lying. I could
 21 probably make them lie by making these promises. I
 22 don't do that.

23 I'm probably being disjointed. I apologize
 24 for that, but this is a passionate issue for me. I
 25 would point out to you and the others who have accused

1 me of terrible things, nobody in 20 years has ever been
 2 paroled because I wrote a letter for them, and if
 3 somebody has I don't know that. Nobody has come up and
 4 said hey, A.P, guess what, I got paroled because you
 5 wrote, I don't know of that ever happening.

6 So, no, sir, inmates don't help us because
 7 they've been promised something. Inmates help us
 8 because I think something clicks within them, you know,
 9 it's time to do the right thing; and thank the Lord
 10 they do that, some of them. Some of them don't. Some
 11 of them tell me to get screwed and take a walk.

12 Q. Now, you testified at Mr. Speer's trial,
 13 correct?

14 A. I don't recall. I probably did, I probably
 15 did his fingerprints. I'm not sure.

16 Q. Do you understand that regardless of what
 17 your thoughts are concerning these parole letters that
 18 a jury or a fact-finder might imply different thoughts
 19 upon reading those parole letters?

20 A. No, sir. I believe that the letters are so
 21 basic they speak for themselves: Here's the
 22 information, here's the truth. I mean, it could be
 23 disproven if I've written a lie in the letters. Here's
 24 the truth, you folks on the parole board use this if
 25 you can, if you want to. If you don't want to, fine.

1 I'm not telling them one way or the other, and if you
 2 have any questions call me, which they never do. So,
 3 yes, a defense lawyer can take that and could skew it;
 4 and a prosecutor could take that and skew it as well.
 5 So a juror sitting there figuring out which skew to
 6 listen to, and I can't speak to what jurors believe
 7 because I don't know. I know they're all different.
 8 But if I testified about parole letters in the Speer
 9 trial, I don't recall that. I'm not saying I didn't.
 10 I just don't recall that.

11 Q. But there would have been parole letters in
 12 Mr. Speer's case because you had already had Mr.
 13 Canales case?

14 A. I believe that to be correct.

15 Q. And assuming that those parole letters were
 16 not turned over to the defense, do you see that that
 17 could have been important? The jury would have been
 18 deprived the information that you had sent those parole
 19 letters on those inmates' behalf?

20 A. No, sir, I don't believe that and here's why,
 21 because if I testified that I wrote parole letters the
 22 jury now knows. I believe if it's that important the
 23 defense should have said, well, where are they, let me
 24 see your copies. Which they could have had because;
 25 like we've talked about earlier, they're available. I

1 don't know which box they were in or something, but
 2 they were available.

3 Q. If they asked -- well, I want to clarify that
 4 point. If the parole letters were in your maroon
 5 folder, you've already testified that you considered
 6 that work product and would not have been delivered to
 7 the defense?

8 A. I'm sorry that I clouded that up. I don't
 9 think a parole letter is work product. I think like
 10 these notes here are that we've talked about where I'm
 11 talking about witnesses in a new case on Larry Whited,
 12 I think that's work product. I don't think a parole
 13 letter is. So barring knowing where to keep parole
 14 letters when I write them, I put them either in my
 15 binder, in a folder, in a case box, in a drawer. I
 16 don't have a particular policy where I keep them, but
 17 if I'm testifying about, yes, I wrote parole letters on
 18 these inmates and the defense said give them to me,
 19 I'll give it. If they'd have said at pretrial, I would
 20 give it to them. I have no reason -- if I'm going to
 21 testify to it, why would I hide it? I mean, I'm
 22 telling the folks it's there.

23 So, no, sir, that's not work product, and
 24 maybe I'm wrong, but I don't think it is work product.

25 Q. Doesn't that presuppose that someone has made

1 the decision for you to testify during the Speer trial?

2 A. Somebody has what now, presuppose?

3 Q. What I understood your testimony to be is
 4 that if you testified I wrote parole letters then
 5 what's the big deal because I testified there were
 6 parole letters.

7 A. No, not what's the big deal. What's the big
 8 deal that you're making of it that, well, if you are
 9 testifying to it why didn't you hand it to the defense
 10 lawyer to testify to it. That's the lawyer's call.
 11 That's not my call. If I'm testifying to it and the
 12 defense attorney says show it to me, I will. I won't
 13 try to hide it or say, well, it doesn't exist. Well,
 14 here it is because I believe that bolsters what I'm
 15 saying because the letter is so generic, I think --
 16 well, I don't know why defense lawyers do what they do,
 17 but I think a jury reading a letter I had written and I
 18 just testified about bolsters what I say.

19 Q. And what I'm asking you is that if a
 20 determination is made that you not testify in that case
 21 do you not tell the defense we have these parole
 22 letters?

23 A. That's incorrect in the substance of it. If
 24 I don't testify -- and I still don't recall testifying
 25 in the Speer's case about it, but if you tell me I did

1 I'm going to believe you.

2 Q. Well, again it gets foggy to me too because
3 I've looked at them both.

4 A. I don't know.

5 Q. So I'm not for sure, but what I'm trying to
6 get at is --

7 A. I hope I did.

8 Q. -- if you didn't testify, would you have
9 necessarily have delivered the parole letters to
10 Mr. Speer's trial counsel?

11 A. With those parameters, if I did not testify
12 the defense knew I wrote parole letters because
13 somebody asked our witnesses, be it Mr. Mullin or the
14 other guys. Our witnesses, I remember Bruce Innes
15 getting on the stand in "What has the State done for
16 you?" And I remember in their close that they hammered
17 the fact that they were accusing us of paying for their
18 testimony, not just in parole letters, but they made us
19 sound like we were actually paying and they were
20 getting good things. Bruce Innes hadn't gotten a good
21 thing yet that I recall, that I know of. I hadn't seen
22 him in a pretty good while.

23 So if I did not testify, the defense
24 regardless of that fact knew that there were parole
25 letters written, and they also knew that after Speer's

1 trial there would be parole letters written, so I don't
2 want it thought that that was hidden from anybody.
3 It's not hidden.

4 Q. But it may not have necessarily been turned
5 over to them.

6 A. I don't know. I don't know if it was a part
7 -- well, it couldn't have been discovery prior to it
8 because they weren't written yet.

9 Q. Now let's back up though because I want to
10 make sure, and again I may just be misunderstanding
11 this.

12 A. And I'm simple.

13 Q. But you have Canales' trial.

14 A. Yes, sir.

15 Q. And from what I understood your testimony to
16 be is that after that trial was complete you wrote
17 parole letters on the witness's behalf during the
18 Canales trial?

19 A. Well, you know what, when you put it like
20 that I need to see the dates on my parole letters, I
21 guess. Maybe I waited until after Speer's.

22 This says November the 6th, 2000. I wrote
23 letters to the parole board for each witness and also
24 Sammy Buentello, so November of 2000 I would have
25 written them.

1 Q. So that would have been after Canales' trial
2 but before Speer's trial.

3 A. There you go, that's right.

4 Q. And the question is, did you provide those
5 letters of November 6th, 2000, to Mr. Speer's trial
6 counsel?

7 A. Well, I didn't personally give them to the
8 lawyers, but they went into our active case file, the
9 parole letters.

10 Q. Maybe, maybe not.

11 A. No, sir, I wouldn't have said it if I didn't
12 do it, especially in that note that I wrote so many
13 years ago never knowing this was going to happen.

14 Q. Okay, I see what you're saying, and we'll get
15 to it, and I don't want to rehash it, but we'll get to
16 it in a minute. It says, "copies made of above, one
17 for each inmate, one for SPU file."

18 A. Yes, sir. So, in other words, not only do I
19 write it to parole, they have copies, the inmates get a
20 copy, and then our file gets a copy.

21 Q. And when you reference the SPU file --

22 A. I'm talking about the case file, no longer my
23 file.

24 Q. Okay, no longer your maroon folder or Manila
25 folder that you keep for yourself?

1 A. Absolutely, or the maroon folder after that
2 second trial would have gone in these boxes; but
3 according to this they went into the boxes. I'm so
4 glad you showed me. Thank you.

5 Q. Now, once the parole letters make it into
6 what we're going to call the SPU file, which would be
7 the file that Mr. Mullin kept in his office or near his
8 office, whether that file was made available to the
9 defense team by actually taking the file to New Boston,
10 can you answer that question?

11 A. No, I can't, I can't.

12 Q. And so it's your position that and correct me
13 if I'm wrong is that with the exception of your maroon
14 folder and this Manila folder that you kept with you
15 because of things you considered work product, if the
16 defense had traveled to Huntsville they could have
17 looked at any of the other documents?

18 A. Yes, sir, because I called one of the lawyers
19 I can't remember which one, I made a note of it too
20 that I called them, said I'll be in Huntsville all day
21 because they were coming here for something; if you
22 need to see anything, I'm here, all the stuff is here.

23 Q. And I guess what I'm real unclear about and
24 maybe this is better for Mr. Mullin is, how did they
25 get the initial information?

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1 A. Who?

2 Q. The defense team, how did they get the
3 witness statements, the interviews?

4 A. I don't know, sir.

5 Q. But you would agree with me that being
6 released from ad-seg can be a benefit?

7 A. Yes, sir, I do.

8 Q. And I guess with regards to closed custody
9 there are two ways to look at that: One, a person
10 might want to get out of closed custody so that he can
11 get back and mingle with the general population?

12 A. Get out of closed custody?

13 Q. Yes, sir.

14 A. Yeah, you'd want to be out of close. I'd
15 rather be in ad-seg than in closed custody.

16 Q. Why is that?

17 A. Because the bad inmates who have not quite
18 been found out to be bad enough to be in ag-seg are all
19 in closed custody, and that's why we have so many
20 problems. A lot of our assault cases and murders,
21 weapons cases come out of closed custody because
22 they're bad, uncooperative, incorrigible inmates. They
23 just haven't gotten bad enough yet to be in ag-seg, so
24 I'd rather be in ag-seg where I'm by myself 23 hours a
25 day than closed custody. I'd rather be in general

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1 population or medium custody or minimum.

2 Q. Right, and I guess it cuts the other way to
3 some extent is that you may be an inmate, for lack of
4 better words, may be a 98-pound weakling in general
5 population and that individual might prefer to be in
6 closed custody or ad-seg.

7 A. Absolutely not, no, sir. I could just quote
8 you many problems where weak inmates have been in close
9 custody and become victims. They would be tossed
10 around like rag dolls, and that just happened. We just
11 come off a trial where that was the situation. A weak
12 inmate does not want to be in close custody because the
13 people who have gotten there have earned their way
14 there through usually violence, and they're tough, bad
15 inmates, bad, bad-acting inmates.

16 Q. Would you characterize Mr. Innes as being a
17 weak inmate?

18 A. No, sir. He has health problems too. I
19 forget what they are, but I know they're serious, but
20 when I met him he was pretty stout, and he was some
21 kind of, not enforcer, but some kind of -- a guy who
22 used force to keep the gang running smoothly; in other
23 words, he was a tough guy.

24 Q. Muscle?

25 A. Yes, sir, and able to fight. I think he was

1 a fighter in the free world of some kind. So, no.

2 They called him Kung Fu. That was one of his names, so
3 he was pretty tough.

4 Q. Were you aware that Mr. Innes had in his past
5 refused housing so that he could be placed in closed
6 custody?

7 A. Well, no, I didn't, but I don't doubt it.

8 Q. And why do you don't doubt it?

9 A. Because he's a tough inmate and he was a
10 gangster, so that's the kind of inmate that occupies
11 closed custody, bad, bad-acting inmates.

12 Q. But what I'm telling you is, did he ever tell
13 you that he actively tried to get put into closed
14 custody?

15 A. I'm not saying he didn't tell me, but I don't
16 recall the conversation or the words he used or
17 anything, but I'm not saying he didn't say it.

18 Q. And it could be that from his perspective or
19 from any inmate's perspective closed custody might be
20 better than being in the general population because
21 you're not exposed to general population.

22 A. I don't know why an inmate would prefer
23 closed custody unless his unconfirmed gang member mates
24 are in closed custody, he might want to be there then
25 because you could get drugs, sex, anything you want in

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1 A. Yes, sir. It looks like there was a sticky
2 on top of it at one time. I don't know this person.

3 Q. But the sticky appears to be someone, perhaps
4 a guard with TDC that is expressing concern as to why
5 Mr. Innes would be in the process of being deconfirmed
6 but yet writing a major in the Texas Mafia?

7 A. Let's see, "According to Inmate Innes 07
8 screen," which is a screen classification he uses on
9 terminal about his situation with the gang, he is
10 supposed to be on the TM hit list. If he was, why
11 would he be writing the district major a letter like
12 this, and this says C03, so that's a guard named Heath.
13 So what's your question?

14 They denied a letter from him to this person.

15 Q. So what happened -- just tell me what
16 happened based on your understanding of reading
17 Deposition Exhibit No. 16.

18 A. This one is hard to read. "Shockley's
19 cousin, Shockley's cousin was here"?

20 Q. Let me try it this way.

21 A. You want to recap it for me.

22 Q. I'm going to try to because again, I'm not
23 clear what happened either because I don't understand
24 what goes on in the prison, but this is my take on it,
25 and tell me if I'm wrong, that Mr. Innes was writing a

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1 letter to a major, a ranked major in the Texas Mafia,
2 and the security threat group prevented that letter
3 from going out.

4 A. Yes, sir. I believe that's what happened,
5 and I can't see the date. It says June 12th something,
6 so I don't know when it was.

7 Q. But the point of the guard was we need to be
8 suspect of Mr. Innes because he's telling us he's
9 trying to deconfirm, but yet he's still trying to write
10 letters.

11 A. Right. That officer is saying if he's on the
12 hit list of the Texas Mafia why would he be writing
13 this major. Oh, it's from the Wynne Unit.

14 Q. I'm going to show us what's been marked as
15 Deposition Exhibit No. 17 and ask if you can identify
16 that document.

17 A. It looks like Bruce's handwriting, a letter
18 to me, spelled my name wrong. I don't know what the
19 date, it's a Thursday, still at the Wynne Unit 10/7 of
20 '99.

21 Q. I'll let you read over that, but I just want
22 you to summarize for me what you understand the purpose
23 of that letter is for.

24 A. What's your understanding of what Mr. Innes
25 is writing you about in Deposition Exhibit No. 17?

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1 A. He's telling me that he caught or what we
2 call caught a new case, or he's been given a new
3 disciplinary case, possible criminal charges, it looks
4 like for what they're saying is a weapon, and he's
5 telling me that he was trying to help a guy fix his
6 radio or make a tool to fix his radio, a screwdriver,
7 out of this shaft from his fan; and he's saying that
8 when he tried to get rid of that tool that it was found
9 out, which happens a lot. They know that's Bruce
10 Innes's tool and could have been a weapon, probably
11 looked like a weapon, I'm sure.

12 A. He's saying he has no reason to make a
13 weapon. He's probably asking for me for help with this
14 disciplinary case, but I didn't see it come to that in
15 the letter because he moves over to the fact that he's
16 been -- his lawyer has said that the deal on his
17 weapons cases that are pending in New Boston is for 10
18 on one case and five on the other, and he's telling me
19 that wasn't the deal; the deal was for three years and
20 the weapons charge dropped. So all of that stuff is
21 out of my purview. I don't have anything to do with
22 that. I don't know what his plea offers were. As a
23 matter of fact, I didn't know Bruce existed until later
24 on in this case. So he's complaining to me that he
25 thinks they're going back on what was promised to him

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1 on the plea deal, plea agreement.

2 Q. Let's focus on the first issue, the issue
3 about this part from the fan. It's my understanding --
4 correct me if I'm wrong -- is that that would have been
5 a new potential weapons charge that he picked up at the
6 Wynne Unit.

7 A. Could have been, yes, sir, could have been.

8 Q. Sometime prior to October of '99?

9 A. Well, yes, sir, I believe so, yes, sir.

10 Q. And let's talk about weapons cases in TDC.
11 Number 1, it's a big problem?

12 A. Could be. Well, it could be a second-degree
13 felony probably for Bruce or first degree. I can't
14 remember how many enhancements he has; it could be. It
15 could go all the way up to life stacked. So, yeah, it
16 could be a terrible problem.

17 Q. And from what I understand your testimony, it
18 can be a problem twofold: One, it could be a criminal
19 case, or it might be a disciplinary.

20 A. Or both.

21 Q. Or both.

22 A. Yes, sir.

23 Q. With regards to the disciplinary aspect,
24 catching a weapons charge, what does that do to an
25 inmate as far as the discipline?

<p>89 1 A. The first thing that happens is they would 2 put him in a special cell prehearing detention. He 3 would lose immediately the housing that he's in, and he 4 would stay in that transit status until he has a 5 hearing, a disciplinary hearing, which could be soon, 6 or it could be days. 7 And if an inmate is convicted, especially of 8 a weapons case -- and the disciplinary process is long 9 before indictment -- he could be put in ad-seg, he 10 could be put in closed custody, lose whatever 11 privileges he has as far as visitation and commissary, 12 recreation. So a lot of bad things could happen to him 13 just from the disciplinary. 14 Q. What about lose good time credits? 15 A. Yes, yes, sir. 16 Q. When we talk about good time credits, what 17 are we talking about? 18 A. The accumulation of credit to your sentence, 19 which is called good time, which can be added together 20 to take down the number of years you serve in prison. 21 Q. Make you parole earlier? 22 A. Sure, could. 23 Q. And with regards to you mentioned commissary, 24 are there different amounts that an inmate can spend on 25 commissary depending on where he's classified?</p>	<p>91 1 to life. 2 A. Yes, sir. 3 Q. And with regards to your experience in the 4 Special Prosecution Unit, are those the type of cases 5 that your office handles, weapons in TDC? 6 A. Yes, sir. 7 Q. And your experience with those types of 8 cases, what do generally inmates make weapons out of? 9 A. Well, like this, pieces of a fan like he's 10 talking about, pencils, bones, metal from inside the 11 cell, Plexiglas from inside the cell or outside, pieces 12 of fence, just about anything that's stiff enough to 13 put inside a human being, you know, a stabbing device 14 could be made to it. 15 Q. Fair to say they can be ingenious in creating 16 weapons? 17 A. Uh-huh. 18 Q. Can make a weapon out of anything? 19 A. Uh. 20 Q. Is that a "yes"? 21 A. Yes, sir, it is. I'm sorry, I apologize. 22 Q. Including fingernail clippers? 23 A. Yes, sir. 24 Q. In fact, your office has prosecuted cases 25 where an inmate has made weapons out of fingernail</p>
<p>90 1 A. Yes, sir. 2 Q. And how does that work? 3 A. I don't know the numbers anymore, but I used 4 to. You get more spend per two-week period according 5 to your classification. I don't remember how much it 6 is. 7 Q. Fair to say that the higher your 8 classification, the lesser amount you're able to spend 9 in commissary? 10 A. The more strict your classification the more 11 you can spend at the commissary, yes, sir, in a given 12 time. 13 Q. So the weapons charge potentially could have 14 caused Mr. Innes great problems both in how he was 15 housed and classified; is that correct? 16 A. Yes, sir. 17 Q. And other things, such as denying him 18 recreation and commissary and those sorts of things? 19 A. Yes, sir. 20 Q. It also could have resulted in additional 21 criminal charges, which in his case he would have 22 gotten potentially the big bitch. 23 A. Could have if he had enough enhancements. I 24 don't recall. 25 Q. Which could have left him anywhere between 25</p>	<p>92 1 clippers? 2 A. Yes, sir. I've testified in those very 3 cases, yes, sir. 4 Q. I'm going to hand you what's been marked as 5 Deposition Exhibit No. 18 and ask if you can identify 6 that document. 7 A. That's a letter from me to Bruce Innes at the 8 Wynne Unit. 9 Q. Does that letter appear to be in response to 10 Deposition Exhibit No. 17? 11 A. I would imagine because of the dates, yes, 12 sir. 13 Q. Generally can you tell us what's contained in 14 Deposition Exhibit 18? 15 A. Yes, sir. Well, I'm telling him I have 16 nothing to do with the plea bargain agreement, first of 17 all, which is the last subject in this letter. And 18 then where he's talking about the disciplinary case for 19 the fan part being found and called a weapon, I'm 20 telling him, I'm informing him that -- and I'm 21 informing you as I did earlier, just because somebody 22 brings a weapon case to us doesn't mean we're going to 23 accept it for prosecution for a variety of reasons. 24 And back in 1999 that was the case as well. We don't 25 prosecute everything brought to us. Now it's a</p>

1 prosecutor's call.

2 Q. And a prosecutor makes that call perhaps
3 sometimes with your input?

4 A. I do input, yes, sir, I sure do; and
5 sometimes it doesn't make any difference.

6 Q. I understand.

7 A. But anyway, he was, by the tone in his letter
8 he's like being -- I don't know the proper word -- like
9 aggressive, like you guys promised something and you
10 didn't do it. His tone is -- I can't think of the word
11 I'm trying to say -- it's not gentle as I read it, but
12 at the same time when I decided to write him back -- I
13 could have decided not write him back, but I did; so
14 when I decided to write him back, first of all, to tell
15 him I have nothing to do with the plea process, don't
16 bring that to me, I have nothing to do with it, the
17 weapons thing, if our prosecutors decide to file on
18 him, he's going to get filed, and I've told him that
19 since all of these cases, as a matter of fact: If you
20 do something we're going to come after you and never
21 made any bones about that, but I'm also reminding him
22 we don't have to pursue everything that comes to us,
23 and that's the case in the free world and all of my
24 police career, and I don't see anything wrong with it.

25 Q. Do you recall whether or not your office ever

1 prosecuted criminally Mr. Innes for possession of the
2 fan part that is described in Deposition Exhibit
3 No. 18?

4 A. I don't think we did.

5 Q. Do you know the reasons why you did not seek
6 prosecution in that case?

7 A. In my opinion, it's probably because he was
8 helping us with these cases, and I think that would be
9 legitimate.

10 Q. Can you tell us as you sit here today whether
11 Deposition Exhibits No. 17 and 18 were ever disclosed
12 to Mr. Speer's trial counsel, Mr. Carter or Mr. Dodson?

13 A. I don't know.

14 Q. Can you tell us sitting today whether
15 Deposition Exhibits 17 or 18 ever made it from your
16 Manila file or your maroon file into what we've been
17 calling the SPU prosecution file prior to completion of
18 Mr. Speer's trial?

19 A. Yes, sir.

20 Q. How do you make that determination?

21 A. This file is called "miscellaneous Innes
22 letters," and this is how I recall it looking when
23 Mark Mullin made up the prosecution boxes, so because
24 of the fact it's in this file, it's in the
25 miscellaneous Innes letters file, which happens to be

1 in our case file, I'm telling you that it was in our
2 file.

3 Q. And again, I'm just not following you how
4 you're so sure of that. Take me step by step through
5 the process.

6 A. We have a case file. We have an active file
7 -- we have a file in the active case file.

8 Q. It's confusing because you've got two cases
9 in one file, and just as aside, I'd hope you not do
10 that in the future, but I can understand why y'all did
11 it because it was met with the same facts; but
12 nevertheless, that's just my two cents' worth.

13 A. And this is probably not the most confusing
14 case we've ever worked, like the 20-defendant case I
15 was telling you about. Because we have a file in the
16 hand of Mark Mullin called "miscellaneous letters."

17 Q. And when you say that, the file that you're
18 referring to is a Manila file that has a handwritten
19 notation, "miscellaneous Innes letters."

20 A. Yes, sir; and it's a legal-size file. Sir?

21 Q. Go ahead.

22 A. That's Mark Mullin's writing.

23 Q. That's what I was going to ask. And you said
24 it's a legal-size file, so I guess you'd find some
25 significance in that.

1 A. No. I'm just being more descriptive for the
2 record.

3 Q. I only use letter-size files.

4 A. Well, that's what I use.

5 Q. And that's why you I asked you if it made any
6 difference.

7 A. And I don't carry around a legal-size file.
8 When I told you I keep a Manila file sometimes in
9 conjunction with that, I don't keep a legal-size file.

10 Q. You keep a letter-size file.

11 A. I keep letter size. It's just easier to
12 handle for me, and they fit in there much better. I
13 don't like legal-size files, but that's an aside.

14 Q. But apparently Mr. Mullin likes legal-size
15 files.

16 A. Yes, sir.

17 Q. And he uses that.

18 A. Yes, sir. Now, I'm not saying exclusively,
19 but he does use a lot of them, and he's very organized
20 when he does file things. He has his own system, but
21 he knows what his system is, and because of the fact
22 that this letter is in a file not my own I am
23 testifying to you this morning that this letter was
24 inside this file, and the defense had full access to
25 this file.

1 Q. And how do you know at what time that letter
 2 made it into the legal-size file marked "miscellaneous
 3 Innes letters"?

4 A. I can't tell you a time frame. I don't know
 5 when.

6 Q. It could have been before Mr. Canales' file?

7 A. Well, I believe it was. I believe it was in
 8 1999.

9 Q. It could have been after Mr. Canales's file.

10 A. It could have been before, but it could have
 11 been after.

12 Q. That's what I'm asking.

13 A. If it was before, it was not after. I
 14 believe it was before the Canales trial.

15 Q. But you don't know that for a fact?

16 A. I don't know. I don't know the date that the
 17 letter was put in there. That's my answer.

18 Q. So my question is since you don't know when
 19 it was put in there you don't know whether it was put
 20 in there before Mr. Canales's trial?

21 A. I believe, I sincerely believe that it was
 22 out in there before Canales' trial. One thing, it's in
 23 chronological order, as I just glanced. Another thing,
 24 I see the note that I wrote to Mark Mullin on the
 25 previous letter, put there before this letter, so that

1 tells me things were going chronologically. The things
 2 that I put in the file were chronological, not like I
 3 told you before. There were things that I didn't put
 4 in here, say, parole letters because I didn't think
 5 they were exculpatory, but if I'd been asked about them
 6 I would have given them up.

7 So my best knowledge is, my best testimony is
 8 that these were in the file prior to the Canales trial,
 9 certainly before the Speer's trial.

10 Q. Now, in connection with the file that you're
 11 referring to that is contained in the SPU prosecution
 12 file with the title "miscellaneous Innes letters," do
 13 you know whether or not that file would have ever been
 14 taken to a pretrial in the Speer's case?

15 A. I don't know. Maybe Mr. Mullin will
 16 remember. I don't know.

17 Q. And if it wasn't taken on one of your trips
 18 to New Boston for pretrial, the only way the defense
 19 would have been able to employ the contents of that
 20 file would have been to come to the office here in
 21 Huntsville?

22 A. If it was not taken to them and if I or Mark
 23 hadn't mailed them information, yes, they would have
 24 had to come and look at it.

25 Q. And do you understand and agree with me, sir,

1 that taking light the fact that you have testified that
 2 probably the reason that that case was not prosecuted
 3 as a weapons case was because of Mr. Innes's
 4 cooperation, do you understand that to be potentially
 5 impeachment evidence that could be used against
 6 Mr. Innes?

7 A. No, sir, I don't understand that to be the
 8 case, but I'm understanding what you're saying to me,
 9 but I believe that's a prosecutor call. I'm talking
 10 about whether or not we prosecute that weapons case.
 11 That's not my call. If I had input, my input would
 12 have been: Would you please take this into
 13 consideration because he's helping us in a much more
 14 important case, perhaps maybe even to bring down the
 15 Texas Mafia. So that would have been my input. I'm
 16 saying I didn't input that. I would have been glad to
 17 input that.

18 So as far as the impeachment, I don't know.
 19 I don't understand all about that.

20 Q. Well, you understand that inmates will do any
 21 number of things to benefit themselves, and you've
 22 encountered that in your career.

23 A. I just had an epiphany. When Innes
 24 testified, I know that he testified that he was given a
 25 deal for the older weapons cases. I don't know if he

1 said the years or not. I don't recall that, but I do
 2 know that that was known to the defense lawyers. So,
 3 yes, I understand that he could have been asked if he
 4 was given a deal on this brand-new weapons case from
 5 the Wynne Unit, and the jury had a right to know about
 6 that; but I don't know if he knew that that case was
 7 not pursued because of this.

8 Now, he might have had it in his heart and in
 9 his mind, well, they didn't go after me because I'm
 10 helping them. But if we told him that, yeah, the jury
 11 could have known that.

12 Q. And your letter marked Deposition Exhibit
 13 No. 18 tends to indicate that you're probably not going
 14 to prosecute him for that case.

15 A. That's from me to Bruce, and I left it open
 16 like that because he could have, he could have been
 17 prosecuted. Had the Dickerson case gone away somehow,
 18 we could have still gone after Bruce Innes. So I'm not
 19 telling him we're not going. I want to make that
 20 clear. I'm leaving it open.

21 Q. You're leaving it open, but you're giving him
 22 an indication that it probably won't be pursued if he
 23 continues to cooperate.

24 A. Well, no, sir. I mean, he could have read
 25 that into it, and you are certainly reading that into

<p>101</p> <p>1 it, but I consider it leaving it open because in the 2 back of my mind I'm always knowing an inmate can 3 manipulate me, and I'm going to leave it open. Even on 4 death row cases that we don't normally go after, I 5 leave those open, like, hey guess what, we are going to 6 go after you, I never said we're not.</p> <p>7 So I understand what you're telling me that 8 I did, but I left it open; we could have still gone 9 after him.</p> <p>10 Q. And Deposition Exhibit 18 could have been 11 important for the jury in Mr. Speer's case as to 12 Mr. Innes's cooperation?</p> <p>13 A. Sir, that would be a defense call. I don't 14 know. That's their call.</p> <p>15 Q. But from your perspective at the time that 16 you wrote the letter marked Deposition Exhibit 18, you 17 didn't think it could be used for anything?</p> <p>18 A. I didn't think that what, the weapon?</p> <p>19 Q. No, the letter, you didn't think there was 20 anything useful?</p> <p>21 A. Oh, when I wrote the letter I wasn't 22 anticipating future trials or defense strategies. I 23 wasn't anticipating anything. I was responding to him 24 being so aggressive in his letters.</p> <p>25 Q. And you didn't see that it would be anything</p>	<p>103</p> <p>1 weapons case out of the Wynne Unit?</p> <p>2 A. To my knowledge, no, sir. My input would 3 have been not to indict him.</p> <p>4 Q. And because your input would have been not to 5 indict him because he provided you valuable information 6 in the Dickerson case as well as understanding the 7 structure of the Texas Mafia?</p> <p>8 A. And at the time continuing to help us. I 9 would do anything I can to break down that gang, yes, 10 sir, I would within the law.</p> <p>11 Q. I'm going to show you Exhibit Deposition 12 Exhibit No. 19 and ask if you can identify that 13 document.</p> <p>14 A. It's a letter from Bruce to me, Bruce Innes 15 to me in 1999.</p> <p>16 Q. And Deposition Exhibit No. 17 is a letter 17 from Mr. Innes to you?</p> <p>18 A. 19?</p> <p>19 Q. I'm sorry, 19.</p> <p>20 A. Yes, sir.</p> <p>21 Q. And can you tell what date that letter is?</p> <p>22 A. He wrote July 7th, it looks like '99.</p> <p>23 Q. What is the substance of that letter?</p> <p>24 A. Let's see, he said that he got my July the 25 1st, '99 letter delivered properly and not opened.</p>
<p>102</p> <p>1 impeachment value in Deposition No. 18?</p> <p>2 A. Well, sitting here today as you describe it, 3 I say, well, he could have been impeached with that, 4 but at the time I'd never considered that, no, sir, and 5 it was in the file, so the defense could have used it 6 all they wanted.</p> <p>7 Q. Clearly, if he wasn't prosecuted for the 8 weapon case at the Wynne Unit, which is separate and 9 apart from the weapons cases he obtained in Telford 10 Unit, to which he did receive sentences --</p> <p>11 A. Something.</p> <p>12 Q. -- that would be a benefit conferred on the 13 inmate?</p> <p>14 A. What would?</p> <p>15 Q. If he didn't get prosecuted for a weapons 16 charge because of his cooperation in the Dickerson 17 murder.</p> <p>18 A. It is a benefit per se because he didn't get 19 time for that; however, he could have gotten the same 20 benefit by us prosecuting him and running the sentence 21 cc with the other two, so there's many things we could 22 have done that would have benefited him and still 23 indict him for that weapons case, so that's not the 24 only benefit he got out of the deal.</p> <p>25 Q. But the fact is he was never indicted for the</p>	<p>104</p> <p>1 See, the prison won't open mail that comes from any 2 legal source, you or anybody else. That's called legal 3 mail.</p> <p>4 My grievance was answered, which I don't know 5 what grievance he's talking about, where he says in 6 this paragraph "but I'm not going to do anything 7 detrimental to my sentence." In a letter prior to 8 this, I told him what I said a few minutes ago: If you 9 do something bad we're going to come after you, you 10 know, telling you to behave.</p> <p>11 So he's saying like what makes you say that 12 or why would you think I would be bad or do something 13 wrong, what is that about. So he said that he hasn't 14 been contacted by classification about a request for a 15 transfer. He's asking me to make a call to facilitate 16 the transfer.</p> <p>17 Q. We talked about that, that may have been 18 helpful; it might not have been helpful.</p> <p>19 A. Sure, yeah, sure. Because if I told him, I 20 did it.</p> <p>21 Q. But just an inmate requesting transfer --</p> <p>22 A. Sometimes that works out sometimes, but back 23 in this time frame I can't say. Sometimes an inmate 24 with a legitimate request does get transferred. It 25 would have looked nicer or better, more professional</p>

<p>105</p> <p>1 for us to request with a reason, yes, sir.</p> <p>2 Q. So he was seeking a transfer to another unit?</p> <p>3 A. Yes, sir.</p> <p>4 Q. And can you tell what unit he was on at the</p> <p>5 time?</p> <p>6 A. According to the envelope, it was written</p> <p>7 from the Ferguson Unit.</p> <p>8 Q. He also expressed concern that the deal that</p> <p>9 he received on the weapons charges or that they were</p> <p>10 talking about giving him was not what he understood it</p> <p>11 to be.</p> <p>12 A. Is that this letter? I think that was a</p> <p>13 previous letter.</p> <p>14 Q. And your testimony is you would have had no</p> <p>15 input as to what would happen in those cases, the</p> <p>16 Telford weapons cases?</p> <p>17 A. Yes, sir, but I want to clear something up,</p> <p>18 that one you just referred to about not getting the</p> <p>19 deal he thought he was going to get was written after</p> <p>20 he was transferred to the Wynne Unit, and it looks like</p> <p>21 several months after the letter we're talking about</p> <p>22 right now, Exhibit No. 19.</p> <p>23 Q. Did he ever express to you that he wanted to</p> <p>24 go to the Wynne Unit?</p> <p>25 A. I don't recall.</p>	<p>107</p> <p>1 asking for particular units, but I do ask. If he has</p> <p>2 one that he wants to go to, I will ask. I heard about</p> <p>3 problems between he and Eason, and I assume it's from</p> <p>4 that other letter that you showed me a while ago, and</p> <p>5 actually I'm telling him that no matter what Eason is</p> <p>6 bragging about to other convicts, for lack of a better</p> <p>7 term, the nut cutting is when you get on that witness</p> <p>8 stand and you face the Texas Mafia and you start</p> <p>9 testifying. Now your heart is really showing. So</p> <p>10 that's what I'm explaining to Bruce. I'm telling him</p> <p>11 that if you're trying to manipulate us once you get on</p> <p>12 that witness stand it'll become evident.</p> <p>13 And I tell him what I tell all inmates. I'm</p> <p>14 going to try to do what is right. I don't care the</p> <p>15 race, I don't care the person's station in life, if</p> <p>16 he's killed we'll try to prosecute the killers if it's</p> <p>17 right.</p> <p>18 Q. Deposition Exhibit No. 18 indicates that</p> <p>19 Mr. Innes had told you that he preferred housing at the</p> <p>20 Wynne Unit; is that correct?</p> <p>21 A. Yes, sir.</p> <p>22 Q. And he was ultimately moved, in fact, to the</p> <p>23 Wynne Unit?</p> <p>24 A. Yes, sir.</p> <p>25 Q. I want to show you Deposition Exhibit No. 21</p>
<p>106</p> <p>1 Q. If he had done that, you would have sought</p> <p>2 that recommendation?</p> <p>3 A. If there was a unit that he preferred, I</p> <p>4 would have put that in my letter, he preferred this</p> <p>5 unit.</p> <p>6 Q. Again, back to the letter where he's</p> <p>7 referring or expressing some concern that the deal on</p> <p>8 his Telford cases was not what he understood it to be,</p> <p>9 as I understand your testimony, you had no input into</p> <p>10 that?</p> <p>11 A. You mean the deal he got in New Boston?</p> <p>12 Q. Yes.</p> <p>13 A. Right. I believe all of that was done before</p> <p>14 I came into this case. If it was not, then my input</p> <p>15 would have been to do something, you know, agreeable to</p> <p>16 him or for him in this situation, but I don't know if I</p> <p>17 had any input into that.</p> <p>18 Q. I'm going to hand you Deposition Exhibit</p> <p>19 No. 20 and ask if you can identify that document.</p> <p>20 A. Okay.</p> <p>21 Q. And what is Deposition Exhibit No. 20?</p> <p>22 A. 20, it's a letter from me to Bruce Innes,</p> <p>23 July 12th, 2000. He's at the Wynne Unit, and I'm</p> <p>24 telling him I have made effort toward getting him</p> <p>25 moved, and I'm telling him they're supportive of my</p>	<p>108</p> <p>1 and ask if you can identify that document.</p> <p>2 A. I know it's a letter from Roy Smithey to</p> <p>3 Sammy Buentello.</p> <p>4 Q. Why would you have a copy of that in your</p> <p>5 file?</p> <p>6 A. We sometime in the last several years,</p> <p>7 obviously before November 6th, 2000, our office policy,</p> <p>8 unwritten policy became that any requests for inmate</p> <p>9 transfers especially for safety purposes or to get</p> <p>10 inmates -- see, sometimes we move inmates closer to us</p> <p>11 as we get ready for trial to go to talk to them. I</p> <p>12 can't go to Amarillo all the time or Fort Stockton. So</p> <p>13 any request, Royce Smithey -- with an E-Y -- he's our</p> <p>14 chief investigator, we're supposed to go through Royce.</p> <p>15 Royce will call the classification people, and it's</p> <p>16 just to give it where there's one person doing all of</p> <p>17 it. In other words, I make my request through Royce to</p> <p>18 them. The people in Amarillo make a request through</p> <p>19 Royce. It was to streamline it, so he sent me a copy</p> <p>20 showing that, yeah, I did the letter.</p> <p>21 Q. So classification does honor SPU's request</p> <p>22 regarding transfers to different locations on a routine</p> <p>23 basis?</p> <p>24 A. Well, no, it's not routine. It's better now</p> <p>25 that Buentello is gone, but it's not routine. It never</p>

<p>109</p> <p>1 has been routine, but it was our policy to go through 2 Royce to make the request, and sometimes they have been 3 granted.</p> <p>4 Q. And in the Deposition Exhibit 21, you're 5 enclosing or Mr. Smithey is enclosing at your request a 6 list of inmates that testified in either Canales or 7 Speer's trial or I guess actually Canales' trial.</p> <p>8 A. Yes; and Sammy told Royce that he would 9 review each inmate individually to see if it could be 10 done.</p> <p>11 Q. But Mr. --</p> <p>12 A. That doesn't say it's my request or his 13 request. It says here's the list of inmates.</p> <p>14 Q. Well, he carbon copied you.</p> <p>15 A. Sure. I would have asked Royce to write the 16 letter, but the letter doesn't say A.P. asked me to 17 write the letter.</p> <p>18 Q. But you know for a fact that you would have 19 asked him to write the letter?</p> <p>20 A. Oh, yes, yes, sir.</p> <p>21 Q. So it would have been Mr. Smithey working on 22 your request?</p> <p>23 A. I had to go through Mr. Royce to make the 24 request, or I would have done it myself.</p> <p>25 Q. For someone in classification to house the</p>	<p>111</p> <p>1 safekeeping, to be protected.</p> <p>2 Q. So if they didn't indicate either protection 3 or safekeeping, perhaps the inmate had some other 4 reason they wanted to be at that particular unit?</p> <p>5 A. I believe Doyle Hill was from the Houston 6 area, and he was going to parole in 57 days, so his 7 request was to be housed near the Houston area. Of 8 course, he would have paroled out of Huntsville, but 9 for some reason he wanted to go to Houston.</p> <p>10 Q. Now, there was a time where -- again I don't 11 know anything about prison stuff, but do they always 12 parole out of Huntsville?</p> <p>13 A. They could here lately be paroling out of 14 different places. I don't know that to be a fact. I 15 think the females might be. I'm not sure. But 16 generally speaking, they all leave out of the Walls 17 Unit downtown.</p> <p>18 Q. And there was at some point in time parole 19 absentia where they parole out of county jails, that 20 sort of thing?</p> <p>21 A. Yes.</p> <p>22 Q. Now, with regards to Mr. Innes, he didn't ask 23 for protective custody, he asked to either be in 24 general population somewhere close to Austin. I guess 25 that's where he's from.</p>
<p>110</p> <p>1 inmate witnesses according to what their desires were.</p> <p>2 A. Yeah. Royce actually wrote down the request 3 that the inmate made for Buentello to look at to see if 4 it could be done.</p> <p>5 Q. And Mr. Innes requested that he be placed in 6 P.C. segregation or protective custody segregation if 7 he could not be placed in general population?</p> <p>8 A. Yes.</p> <p>9 Q. An Inmate Driver requested to be transferred 10 with Inmate Canida and stay at the same unit as 11 Mr. Canida?</p> <p>12 A. That's what his request was.</p> <p>13 Q. And the last sentence of Deposition Exhibit 14 21, does that indicate that all the requests were 15 approved by Mr. Buentello with classification?</p> <p>16 A. Yes, sir, it does.</p> <p>17 Q. And with regards to these particular inmates' 18 requests as to which units they want to go to, do you 19 know whether that was for safety or for personal 20 reasons or a combination of both?</p> <p>21 A. I think it says on there, like one person 22 said for safety, and I think they've said what their 23 reason was.</p> <p>24 Q. Okay. Well, show me that.</p> <p>25 A. Right here, protection, protection,</p>	<p>112</p> <p>1 A. Well, he asked for protective custody if he 2 could not be in general population. I think he's from 3 Austin.</p> <p>4 Q. In fact, have you visited with Mr. Innes 5 after Mr. Speer's trial?</p> <p>6 A. I believe Mr. Mullin and I both saw him. We 7 were working a murder case at the Hughes Unit several 8 years ago, and I believe we both -- I know I have seen 9 him, and I think Mr. Mullin and I both saw him.</p> <p>10 Q. How many times would you say you've seen him 11 after Mr. Speer's trial?</p> <p>12 A. All I recall is that one time. If there's 13 more, I'm not denying it, but all I recall is that one 14 particular time.</p> <p>15 Q. Is that an occasion where you visited with 16 himself, or was Mr. Mullin there?</p> <p>17 A. Like I said, I think Mr. Mullin was with me, 18 I'm pretty sure.</p> <p>19 Q. Did you ever receive any gifts from 20 Mr. Innes?</p> <p>21 A. I believe he made me a wallet or something.</p> <p>22 I didn't use it. I gave it to some person. I didn't 23 take possession of it.</p> <p>24 Q. Perhaps a wallet and a belt?</p> <p>25 A. No, I never got a belt.</p>

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1 Q. Do you know if that was after Mr. Speer's
2 trial?

3 A. I'm sure it was, yes, sir.

4 Q. Now, with regards to SPU's policy when they
5 have inmate witnesses or a number of inmate witnesses
6 that are going to testify in a particular trial, do
7 y'all try to keep them separated? In other words, you
8 don't want to pile all of your prosecution witnesses in
9 one room, do you?

10 A. No, sir. I mean, sometimes in the courthouse
11 they put them in the same room. That's not policy per
12 se. We don't have a written policy about how to handle
13 inmate witnesses that I know of. When we have several
14 inmate witnesses, like I said, we'll try to get them
15 where it's easier for us to get to them day by day or
16 as we need to talk to them, but we don't ask for them
17 to be housed in the same cell or even to be able to
18 communicate with each other. Sometimes a prison in
19 their own wisdom will transport them all on the same
20 van or bus, and that is not according to our request.
21 Our request is to keep them separate from defense
22 witnesses for obvious safety reasons. So if I answered
23 your question, I don't know, but we don't ask for them
24 to be put together.

25 Q. Well, I guess my question is, in a perfect

1 the case, and he writes "smile" after that. And
2 y'all's accusation was that they did talk about the
3 case and it was all at my behest. That's how I took
4 it.

5 Q. Well, no, I don't think anybody was
6 indicating it was at your behest.

7 A. It sounded really bad the way it was written
8 down.

9 Q. But you can understand that if he says, "we
10 didn't talk about the case on the way down there,
11 smile," that --

12 A. Yeah. It's like to me it says, don't worry,
13 A.P, we didn't talk about the case like you're always
14 telling me to do, see. So the reason he wrote smile, I
15 had no control over that. It would have sounded much
16 better without the word, but he's a convict. But
17 anyway, be that as it may, when I read y'all's charge
18 against me in that brief, I immediately thought, hey,
19 here's proof that I tell these guys let's do it the
20 right way or why would he have said that to me, see, if
21 he had never heard that from me.

22 So I would point to you, point out to you
23 that I have no control over who goes to the hospital.
24 I had no idea they were going to the hospital, and I
25 certainly can't tell them: Put these guys on a van and

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1 world you would prefer that even the State witnesses
2 not be together --

3 A. Sure.

4 Q. -- and communicate?

5 A. Sure. Mr. Mullin, I've seen him hundreds of
6 times, many times tell them: Don't talk about this
7 case, you know, amongst yourselves and especially when
8 they end up at the courthouse together, don't talk
9 about this case. So like I said before, we don't gain
10 anything by them cheating or by us cheating. So I know
11 it's his course of business to instruct the witnesses
12 not to talk.

13 Q. And the reason you don't want the witnesses
14 to talk to each other is you don't want them comparing
15 notes and fabricating.

16 A. It's not fair, it's not fair.

17 Q. I'm going to show you what's been marked as
18 Deposition Exhibit Number 22 and ask if you can
19 identify that document.

20 A. I believe I recall this is so long, unusually
21 long. It's from Larry Whited to me. And, yeah, when I
22 saw one of y'all's briefs it talked about me -- about
23 Larry Whited telling me that he rode a van to the
24 hospital with Bruce Innes, and he's saying, don't
25 worry, we didn't talk to each other on the van about

1 take them to the hospital. I found out when I got the
2 letter from Larry, and I would point out once again he
3 did not testify. If Bruce Innes has told him anything
4 about the trials, it didn't flavor the trial at all
5 because the jury never heard from Larry Whited. And I
6 can't explain to you why he wrote that to me with a
7 smile in there, but I like the fact that he knew not to
8 talk about the case, and he knew that from me or from
9 Mark or both of us.

10 Q. Now, with regards to Deposition Exhibit No.
11 22, can you tell us whether it made it into the SPU
12 prosecution file prior to the time of Mr. Speer's
13 trial?

14 A. I'll try to tell you in just a second.

15 Q. And while you look for that, you understand
16 from a defense perspective any opportunity that an
17 inmate has had to get together and compare notes would
18 be something important for cross-examination?

19 A. Yes, sir. Yes, sir. Now, this is in the
20 SPU case file, and I cannot tell you when this file got
21 into the box. That's my handwriting, and I'll point
22 out it's a letter-size Manila folder. I just happened
23 to notice that this is a letter-size folder.

24 Q. It is a letter-size folder, which to you
25 indicates it's probably not Mr. Mullin's because he

<p>117</p> <p>1 typically as a general rule uses legal-size folders.</p> <p>2 A. Legal size; and I do acknowledge that. I'm</p> <p>3 not trying to hide that from you at all, and that is my</p> <p>4 writing on the tab.</p> <p>5 Q. And the tab says?</p> <p>6 A. "Letters from inmate witnesses to SPU,</p> <p>7 Telford murder case."</p> <p>8 Now, to the best of my knowledge or my</p> <p>9 recollection, the way I labeled this file indicates to</p> <p>10 me personally that it would have been in our case file</p> <p>11 because if this would have been my personal file I</p> <p>12 wouldn't have had to write a label, certainly not</p> <p>13 something that clear because I would know what it is.</p> <p>14 I could look through there and say, Oh, these are the</p> <p>15 letters about the case. So I can't tell you that. I</p> <p>16 can't tell you one way or another, but I believe they</p> <p>17 were in the case file just by virtue of the way the</p> <p>18 label is written.</p> <p>19 Q. Now, with regards to whether that file ever</p> <p>20 went to New Boston during any of the pretrial</p> <p>21 proceedings, can you tell us whether it would have or</p> <p>22 not?</p> <p>23 A. I can't tell you if it ever went to</p> <p>24 pretrials. I can tell you that it probably did make</p> <p>25 its way to New Boston because when I had to go to the</p>	<p>119</p> <p>1 or Royce or somebody else. I don't recall who typed</p> <p>2 this, but it's inmates that testified for us in the</p> <p>3 Canales case, and then also there's, I made or whoever</p> <p>4 made this made a note that he didn't testify but he</p> <p>5 cooperated, and that being Larry Whited. Then it talks</p> <p>6 about a November 6th of 2000 letters to the parole</p> <p>7 board were written for each of them and then letters to</p> <p>8 Sammy Buentello for Innes's gang renunciation. I think</p> <p>9 I typed that. I'm just not sure.</p> <p>10 Q. What was the reason for typing Deposition</p> <p>11 Exhibit 23? Was it an attachment to a letter, or what</p> <p>12 do you think?</p> <p>13 A. I don't know. I see that it was attached to</p> <p>14 something else because of the dog-ear right here. I</p> <p>15 don't know why it was typed and not handwritten. I</p> <p>16 have no idea.</p> <p>17 Q. It also indicates that you wrote a letter to</p> <p>18 Sammy Buentello on November 6th, 2000 for Innes</p> <p>19 regarding his gang renunciation?</p> <p>20 A. Yes, sir.</p> <p>21 Q. And then the last sentence says that copies</p> <p>22 made of the above, one for each inmate, one for the SPU</p> <p>23 file.</p> <p>24 A. Yes.</p> <p>25 Q. And your understanding is that you would have</p>
<p>118</p> <p>1 Telford Unit up there to talk to witnesses I would have</p> <p>2 wanted my notes and my letters to say, hey, I'm A.P.</p> <p>3 Merillat, you wrote me a letter. So they wouldn't just</p> <p>4 say, no, I'm not talking to you. I would say, you</p> <p>5 wrote me a letter, let's talk about that letter. So I</p> <p>6 don't know if it made it to pretrial, but I'm sure it</p> <p>7 made it up to New Boston.</p> <p>8 Q. Just so I'm clear that I understand your</p> <p>9 testimony, anytime that you would have gone into the</p> <p>10 prison to visit with the inmates, you probably would</p> <p>11 have taken the file with you to compare in contrast?</p> <p>12 A. I would have taken certainly parts of it. If</p> <p>13 there was an inmate in the Ferguson and I'm going to</p> <p>14 the Telford, I wouldn't believed I had to take it</p> <p>15 but --</p> <p>16 Q. But when you went to pretrial, which would</p> <p>17 have been at the courthouse in New Boston, you don't</p> <p>18 know whether you took that file with you during any</p> <p>19 pretrial proceedings?</p> <p>20 A. I don't recall independently, no, sir.</p> <p>21 Q. We've talked about Deposition Exhibit 23</p> <p>22 before, but I just want to go through it again just to</p> <p>23 make sure the record is clear. That is, I guess, what?</p> <p>24 What is Deposition Exhibit 23?</p> <p>25 A. It's typewritten and I don't know if I typed</p>	<p>120</p> <p>1 made a copy of all of the letters, parole letters and</p> <p>2 put them in the SPU file?</p> <p>3 A. Yes, sir.</p> <p>4 Q. With regards to the letter from Sammy</p> <p>5 Buentello, would you have also made a copy and put it</p> <p>6 in the file?</p> <p>7 A. Yes, according to this note, I would have,</p> <p>8 yes, sir.</p> <p>9 Q. I'm going to hand you what's been marked as</p> <p>10 Deposition Exhibit No. 24. Before I do that, I notice</p> <p>11 that you're referring to some documents during your</p> <p>12 deposition.</p> <p>13 A. Yes, sir.</p> <p>14 Q. And what is that document?</p> <p>15 A. I made notes to myself after I read the</p> <p>16 brief. Again, I don't know if it was the Canales brief</p> <p>17 or yours, but I made notes of things that I hoped would</p> <p>18 be addressed, and one of them was right off the bat</p> <p>19 about the blanket statement that all gang members are</p> <p>20 seg. I made a note to myself to make sure you knew</p> <p>21 that was not true, and I made a note about the hit on</p> <p>22 Larry Whited, that that's a brand-new case that had</p> <p>23 nothing to do with the guilt or innocence of Canales.</p> <p>24 It's things that I want to make sure that if I get the</p> <p>25 opportunity to people up beyond us know.</p>